

ORIGINAL

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

## United States District Court

JAN 11 2007

for the

at 9 o'clock and 50 min. AM  
SUE BEITIA, CLERK

## DISTRICT OF HAWAII

**Request for Modifying the Conditions or Term of Supervision  
with Consent of the Offender***(Probation Form 49, Waiver of Hearing is Attached)*

Name of Offender: ANDREW BURTON, JR. Case Number: CR 00-00444SOM-02

Name of Sentencing Judicial Officer: The Honorable Susan Oki Mollway  
U.S. District Judge

Date of Original Sentence: 4/16/2001

Original Offense: Count 2: Possession With Intent to Distribute Five or More Grams  
of Cocaine Base, in violation of 21 U.S.C. §§ 841(a)(1) and  
(b)(1)(B), a Class B felony

Original Sentence: The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 78 months as to Count 2 of the Indictment and 5 years supervised release as to Count 2 of the Indictment with the following special conditions: 1) That the defendant participate in a substance abuse program, which may include drug testing at the discretion and direction of the Probation Office; 2) That the defendant is prohibited from possessing any illegal or dangerous weapons; 3) That the defendant shall provide the Probation Office and the Financial Litigation Unit of the U.S. Attorney's Office access to any requested financial information to include submitting to periodic debtor's examinations as directed by the Probation Office; and 4) That the fine of \$1,500 is due immediately. If the defendant is unable to pay immediately, any remaining balance upon release from confinement be paid during the period of supervision on an installment basis according to the collection policy of the Probation Office but at a rate of not less than 10 percent of his monthly gross income. Interest, if applicable, is waived while the defendant is serving his term of imprisonment and shall commence to accrue on any remaining balance upon his release on supervision.

Modification On 6/14/2005, the Court modified the supervised release conditions and imposed the following additional condition: 5) That the defendant be placed in Mahoney Hale, a community corrections center, for up to 180 days at the discretion and direction

of the Probation Office. The defendant shall participate in the programs at Mahoney Hale to include employment and job-training opportunities.

**Revocation:**

On 5/23/2006, the offender's supervised release was revoked for positive urine specimen for cocaine, THC, amphetamine, and methamphetamine, admitting to smoking crack cocaine, refusal to comply with drug testing, failure to submit monthly supervision reports, failure to report to the probation office, and failure to enter The Salvation Army Adult Rehabilitation Center. The offender was sentenced to 8 months imprisonment and 52 months supervised release with the following special conditions: 1) That the defendant shall participate in and comply with substance abuse treatment which includes drug and alcohol testing in a program approved by the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment; and 2) That the defendant execute all financial disclosure forms, and provide the Probation Office and the Financial Litigation Unit of the U.S. Attorney's Office access to any requested financial information to include submitting to periodic debtor's examinations as directed by the Probation Office. The Court also ordered that the fine of \$1,500 is due immediately except that the defendant may use the funds that he presently has for his personal needs while he is incarcerated. Any remaining balance that remains owing when the defendant is released from confinement shall be paid using amounts that the defendant has in his prison account. If the defendant does not have enough to clear the fine, then any remaining balance upon release from confinement be paid during the period of supervision on an installment basis according to the collection policy of the Probation Office but at a rate of not less than 10 percent of his monthly gross income.

Type of Supervision: Supervised Release      Date Supervision Commences: 1/17/2007

**PETITIONING THE COURT**

☒ To modify the conditions of supervision as follows:

*Special Condition No. 3: That the defendant be placed in Mahoney Hale, a residential reentry center, for up to 180 days at the discretion and direction of the Probation Office. The defendant shall participate in the programs at Mahoney Hale to include employment and job-training opportunities.*

**CAUSE**

The offender is scheduled to begin supervised release on 1/17/2007. The offender is currently in Mahoney Hale as a U.S. Bureau of Prisons' inmate. The offender just learned that he was evicted from his apartment he was residing at prior to being incarcerated. He related that he did not have a release residence and did not think he would be able to secure a residence by his release date. The offender requested that he be allowed to remain at Mahoney Hale from 1/17/2007 as a public law placement in order for him to save money and obtain housing. We believe he would benefit from remaining at Mahoney Hale.

It is respectfully recommended that the Court modify the offender's conditions of supervised release to include placement at Mahoney Hale.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject agrees to the modification of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed modification and have no objections to the modification.

Respectfully submitted by,



MERILEE N. LAU  
U.S. Probation Officer

Approved by:



GENE DEMELLO, JR.  
Supervising U.S. Probation Officer

Date: 1/9/2007

Prob 12B  
(7/93)

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THE COURT ORDERS:

- ☒ The Modification of Conditions as Noted Above  
☐ Other

  
\_\_\_\_\_  
SUSAN OKI MOLLWAY  
U.S. District Judge

1/10/07

\_\_\_\_\_  
Date

NOTICE REGARDING MODIFICATION OF CONDITIONS

The defendant understands that any modification of court-ordered conditions is not a waiver of those conditions or of any consequence of violating those conditions. Violations that have preceded this or any modification of conditions may be considered by the court as a basis for revoking supervised release or probation, especially, but not only, in the event of a future violation, whether any such future violation is similar to or different from any preceding violation.

The absence of this notice does not confer, and should not be interpreted by the defendant as conferring, any rights on the defendant. The absence of this notice does not indicate, and should not be interpreted by the defendant as indicating, any position by the court or by the defendant. Even in the absence of this notice, supervised release or probation may, in the future, be revoked based on violations occurring before this or any other modification of conditions.

Agreed to and acknowledged:

A. Burton  
Defendant

Print Name: BURTON, Andrew

Date: 1-8-07

PROB 49  
(5/96)

## United States District Court

District of Hawaii

### Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

[ X ] To modify the conditions of supervision as follows:

*Special Condition No.3: That the defendant be placed in Mahoney Hale, a residential reentry center, for up to 180 days at the discretion and direction of the Probation Office. The defendant shall participate in the programs at Mahoney Hale to include employment and job-training opportunities.*

Witness:

  
MERILEE N. LAU  
U.S. Probation Officer

Signed:

  
ANDREW BURTON JR.  
Supervised Releasee

1-8-07

Date